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U.S. DISTRICT COURT
NEW JERSEY

JUL 22 2003 A 8:30

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FILED

AUG 22 2003

AT 8:30 AM M
WILLIAM T. WALSH, CLERK

Federal Bar No. EFC-6575

Attorneys for Plaintiff
Metrologic Instruments, Inc.

METROLOGIC INSTRUMENTS, INC.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action

Civil Action No. 03-2912(HAA)

Plaintiff,
v.
SYMBOL TECHNOLOGIES, INC.

Hon. Harold A. Ackerman, U.S.D.J.
Hon. G. Donald Haneke, U.S.M.J.

**REPLY TO COUNTERCLAIMS OF DEFENDANT
SYMBOL TECHNOLOGIES, INC.**

Plaintiff Metrologic Instruments, Inc. ("Metrologic"), by and through its undersigned attorneys, by way of Reply to the Counterclaims of Defendant Symbol Technologies, Inc. ("Symbol"), says:

As To: JURISDICTION AND VENUE

41. Metrologic denies the allegations in Paragraph 41, except admits that Symbol purports to assert counterclaims for declaratory judgment under the patent laws of the United States and the Declaratory Judgment Act.

42. Metrologic admits that this Court has jurisdiction over Symbol's Counterclaims.

43. Metrologic admits that this Court has personal jurisdiction over Metrologic.

44. Metrologic admits that venue is proper in this judicial district.

As To: PARTIES

45. Metrologic admits that Symbol is a Delaware Corporation with headquarters in Holtsville, New York, but denies knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 45 and, therefore, denies same.

46. Metrologic admits the allegations in Paragraph 46.

As To: EXISTENCE OF JUSTICIABLE CONTROVERSY

47. Metrologic admits the allegations in paragraph 47.

48. Metrologic admits the allegations in paragraph 48.

49. Metrologic admits the allegations in paragraph 49.

50. Metrologic admits the allegations in paragraph 50.

51. Metrologic admits the allegations in paragraph 51.

52. Metrologic admits the allegations in paragraph 52.

As To: FIRST COUNTERCLAIM

53. Metrologic hereby repeats, re-alleges and incorporates by reference its responses to paragraphs 41-52 in this Reply, as if set forth in their entirety.

54. Metrologic denies the allegations in paragraph 54.

As To: SECOND COUNTERCLAIM

55. Metrologic hereby repeats, realleges and incorporates by reference its responses to paragraphs 41-54 in this Reply, as if set forth in their entirety.

56. Metrologic denies the allegations in paragraph 56.

As To: THIRD COUNTERCLAIM

57. Metrologic hereby repeats, realleges and incorporates by reference its responses to paragraphs 41-56 in this Reply, as if set forth in their entirety.

58. Metrologic admits the allegations in paragraph 58.

59. Metrologic admits the allegations in paragraph 59.

60. Metrologic admits the allegations in paragraph 60.

61. Metrologic admits the allegations in paragraph 61.

62. Metrologic admits the allegations in paragraph 62.

As To: THE ARBITRATION PROCEEDING

63. Metrologic admits the allegations in paragraph 63.

64. Metrologic admits the allegations in paragraph 64.

65. Metrologic admits the allegations in paragraph 65.

66. Metrologic admits the allegations in paragraph 66.

67. Metrologic admits the allegations in paragraph 67.

68. Metrologic denies the allegations in paragraph 68.

69. Metrologic admits the allegations in paragraph 69.

70. Metrologic admits the allegations in paragraph 70.

71. Metrologic admits that Symbol has accurately quoted a selected part of Metrologic's Opposition Brief at page 1.

72. Metrologic denies that Symbol has accurately quoted a selected part of Metrologic's Opposition Brief at page 6.

73. Metrologic admits that Symbol has accurately quoted a selected part of Symbol's Reply Brief at page 2.

74. Metrologic admits that Symbol has accurately quoted a selected part of Metrologic's Opposition Brief at pages 9 and 10.

75. Metrologic admits the allegations in paragraph 75.

76. Metrologic denies that Symbol has accurately quoted the definition of "Licensed SYMBOL Product" from Section 1.44 of the Agreement.

77. Metrologic admits that Symbol has accurately quoted a selected part of the Hearing Transcript beginning at page 4, line 6.

78. Metrologic admits that Symbol has accurately quoted a selected part of Symbol's Opening Brief at pages 2 and 5.

As To: THE ARBITRATOR'S DECISION

79. Metrologic admits the allegations in paragraph 79.

80. Metrologic admits that Symbol has accurately quoted a selected part of the Arbitrator's Decision at ¶ 4, but otherwise denies the allegations in paragraph 80.

81. Metrologic admits that Symbol has accurately quoted a selected part of the Arbitrator's Decision at ¶ 9, but otherwise denies the allegations in paragraph 81.

82. Metrologic admits that Symbol has accurately quoted a selected part of the Arbitrator's Decision at ¶ 13, but otherwise denies the allegations in paragraph 82.

83. Metrologic admits that Symbol has accurately quoted a selected part of the Arbitrator's Decision at ¶ 15, but otherwise denies the allegations in paragraph 83.

84. Metrologic admits the allegations in paragraph 84.

As To: NON-MATERIAL BREACH BY SALE OF "NEW SYMBOL PRODUCT"

85. Metrologic admits that Symbol has accurately referenced the title of Section 15.2 of the Agreement.

86. Metrologic admits the allegations in paragraph 86.

87. Metrologic admits that Symbol accurately quoted a selected part of Section 15.2(B)(1) of the Agreement.

88. Metrologic admits the allegations in paragraph 88.

89. Metrologic denies the allegations in paragraph 89.

90. Metrologic admits that Symbol has accurately quoted a selected part of the Arbitrator's Decision at ¶ 5, but otherwise denies the allegations in paragraph 90.

91. Metrologic denies the allegations in paragraph 91.

WHEREFORE, Metrologic requests that the Court enter an Order and Judgment:

- A. Dismissing Symbol's Counterclaims with prejudice and denying Symbol all relief requested;
- B. Granting the relief requested by Metrologic in its Complaint;
- C. Awarding Metrologic its attorneys' fees, costs and expenses incurred in defending against Symbol's Counterclaims and incurred in this action; and
- D. Awarding Metrologic such other and further relief as this Court deems just and proper.

Dated: August 19, 2003

RIKER, DANZIG, SCHERER, HYLAND &
PERRETTI LLP
Attorneys for Plaintiff
Metrologic Instruments, Inc.

By: Edwin F. Chociey, Jr.
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CERTIFICATION OF SERVICE

I, Edwin F. Chociey, Jr., of full age, hereby certify as follows:

1. I am an attorney at law in the State of New Jersey and a member of the law firm of Riker, Danzig, Scherer, Hyland & Perretti LLP, attorneys for plaintiff Metrologic Instruments, Inc.

2. On the date indicated herein, I caused one copy of plaintiff's Reply to Counterclaims of Defendant Symbol Technologies, Inc. to be sent by regular mail to defendant's attorneys, Joel N. Bock, Esq., Sills Cummis Radin Tischman Epstein & Gross, The Legal Center, One Riverfront Plaza, Newark, New Jersey 07102, and Eric J. Lobenfeld, Esq., Clifford Chance LLP, 200 Park Avenue, New York, New York 10166.

I certify that the foregoing statements made by me are true. I am aware that if any
of the foregoing statements made by me are willfully false, I am subject to punishment.

Edwin F. Chociey, Jr.
Edwin F. Chociey, Jr.

Dated: August 19, 2003

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